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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

J.S.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
CHILDREN & FAMILY SERVICES,

Real Party in Interest.

F057077

(Super. Ct. No. 07CEJ300184)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Jane Cardoza, Judge.

Brent C. Woodward, for Petitioner.

No appearance for Respondent.

Kevin Briggs, Interim County Counsel, and William G. Smith, Deputy County Counsel, for Real Party in Interest.

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*Before Levy, A.P.J., Gomes, J., and Kane, J.

Petitioner (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from a contested 18-month review hearing at which the juvenile court terminated her reunification services and set a Welfare and Institutions Code section 366.26 hearing¹ as to her daughters, M.E. and K.S., and sons, I.E. and A.E. We will deny the petition.

STATEMENT OF THE CASE AND FACTS

In May 2007, a social worker from the Kern County Department of Human Services (department) responded to a report of neglect and caretaker absence/incapacity at the home of petitioner's mother, D., where petitioner and six-year-old M.E., four-year-old I.E., three-year-old A.E. and six-month-old K.S. were living. D. told the social worker petitioner spent several weeks at a time out of town in Fresno where D. believed petitioner was hanging out with friends and using drugs. When petitioner returned, she stayed in her bedroom which D. described as "filthy." After about a week in her room, petitioner would go out of town again. Meanwhile, petitioner was not providing the children medical care and when they were with her she yelled at them and smacked them. On occasion, petitioner also exposed the children to dangerous situations. For example, in October 2006, D. had to go to Fresno and get the children because there was a shooting in the home where they were staying. D. also stated the children witnessed domestic violence between petitioner and her husband, Al.E., father of M.E., I.E., and A.E. At the time, Al.E. (father) was in prison.

The department filed a dependency petition on the children's behalf alleging petitioner's drug use, failure to supervise and provide for the children's medical needs placed them at a substantial risk of harm. The juvenile court ordered the children detained pursuant to the petition and the department placed them in foster care.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Father told the social worker he and petitioner smoked marijuana and crystal methamphetamine. He also said that they had a long history of domestic violence and that he was incarcerated for domestic violence and child abuse. He expected to be released from prison on parole in late May 2007 to the home of his mother, M.C., in Fresno.

In June 2007, the Kern County juvenile court exercised dependency jurisdiction over the children and ordered the case transferred to Fresno County where petitioner and the children were residing. By August, father and petitioner were living together in Fresno, apparently at M.C.'s home.

The Fresno County juvenile court (juvenile court) accepted the case and set a dispositional hearing. In its dispositional report, the Fresno County Department of Children and Family Services (hereafter department) reported that petitioner was 16 weeks pregnant by A.S., father of K.S., and she planned to divorce father. She was living with M.C. and father was "on the run." Petitioner said she needed protection from father because he threatened to kill her and her unborn baby.

In October 2007, the juvenile court conducted the dispositional hearing and ordered reunification services for petitioner, father, and A.S. The next month, father was incarcerated for inflicting corporal injury on a spouse.

In December 2007, at the six-month review hearing, the juvenile court continued services for petitioner but terminated them for father and set the 12-month review hearing for June 2008.

By the 12-month review hearing, petitioner was employed and living in an apartment and had completed her court-ordered services with the exception of the aftercare phase of drug treatment. In addition, she regularly visited the children who were placed in two separate foster homes; M.E. and K.S. (the girls) in one and I.E. and A.E. (the boys) in another. On the recommendation of the department, the juvenile court

ordered services to continue at the 12-month review hearing in July 2008. The court also ordered unsupervised visitation and set the 18-month review hearing for October 2008.

Meanwhile, in September 2008, father was released on parole, a condition of which prohibited contact with petitioner. Within a week of his release, however, he was seen by the girls' foster mother at petitioner's apartment on a Saturday during a weekend visit when the foster mother dropped the girls off at petitioner's apartment. The foster mother stated she knew father was there because M.E. stated "That's my daddy!" When the girls were returned to the foster mother later that day, father was driving the car. The next day, when the girls were picked up at the foster mother's home, the foster mother saw father in the car. The boys' foster mother reported that when she picked the boys up from petitioner's apartment that Sunday, A.E. said "Daddy hurt my head and my teeth." Later, I.E. said his father threw him on the couch and hurt him.

Following an investigation, the department concluded father did not physically abuse the boys but that petitioner was neglectful in allowing contact with father so soon after his release. Consequently, the department brought the matter before the juvenile court and supervised visitation was reinstated. Within nine days of his release, father was back in custody for violating his parole.

In its 18-month review, the department reported that petitioner completed her court-ordered services but continued to expose her children to risk of domestic violence by allowing contact with father. The department also expressed concern that petitioner missed several drug tests, which she attributed to lack of transportation. In light of the continuing detriment petitioner posed to the children, the department recommended the court terminate petitioner's reunification services and set a hearing under section 366.26 to implement permanent plans for the children.

Petitioner challenged the department's recommendation and, at the 18-month review hearing in February 2009, argued that it would not be detrimental to return the

children to her custody and that the department misconstrued the incident in September when father had contact with the children. Petitioner testified that the boys' foster mother was supposed to pick the boys up at 5:00 p.m. and petitioner and the children were outside waiting for her. Father's sisters, nieces and nephews were also outside. At approximately 5:15 p.m., father drove up and the children saw him. He played with them for about 15 minutes and then walked them to the boys' foster mother's car when she arrived. After that, he left. Petitioner further testified she was not expecting father to show up at her apartment that day and knew she was not supposed to have contact with him but did not say anything so as not to upset the children. She stated M.C. transported the girls for visitation and that, during that weekend visitation, she and father were in M.C.'s car.

Father testified his two sisters lived next door to petitioner and he went to the apartment as a favor to his mother to return his sister's van. He knew the children visited petitioner on the weekend but did not believe the children would be there at that time. When the children saw him, they ran to him. Since he had not seen them in 13 months, he was happy to see them.

On cross-examination, father admitted accompanying petitioner and the girls in the van driven by his mother from petitioner's apartment to the girls' foster home around 7 or 8 p.m., making this father's second contact with the children that day.

Following argument, the juvenile court found it would be detrimental to the children to return them to petitioner's custody and terminated her reunification services. The court also terminated A.S.'s reunification services and set a section 366.26 hearing. This petition ensued.²

² Neither father nor A.S. filed a writ petition from the setting hearing.

DISCUSSION

Petitioner argues the juvenile court based its finding of detrimental return on the sole fact that she permitted father to accompany the girls in the van to their foster mother's home. She contends that evidence is insufficient to support the finding and constitutes error. Consequently, she asks this court to issue a writ ordering the juvenile court to vacate its order setting the section 366.26 hearing and to grant her custody of the children. We decline to do so, finding no merit to her claim.

At each review hearing, including the 18-month review hearing, there is a statutory presumption that the child will be returned to parental custody unless the juvenile court finds, by a preponderance of the evidence, that the return of the child would create a substantial risk of detriment to the child's safety, protection or well-being. (§§ 366.21, subds.(e) & (f); 366.22, subd. (a).) In assessing the risk of detriment, the court considers the extent to which the parent participated and made progress in the court-ordered treatment plan. (*Ibid.*) However, ultimately, the court's decision hinges on whether the parent's progress eliminated the conditions leading to the child's placement out of the home. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142.)

On review, we examine the juvenile court's finding of detriment for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) On the facts of this case, as summarized above, we conclude substantial evidence supports the juvenile court's finding.

In this case, petitioner's children were removed from her custody because of her drug use and neglect, part of which involved exposing her children to domestic violence. Petitioner minimizes the evidence of risk she poses to the children by pointing out that she completed her court-ordered services and that contact with father was brief and occurred only after he showed up unannounced. What petitioner ignores is other compelling evidence that, despite 18 months of services, she was willing to re-expose the

children to a dangerous situation. The appellate record makes clear that father has a strong propensity for violence. He was serving a prison sentence for domestic violence and child abuse when the children were originally detained. Within approximately six months of his release, he was back in prison for a similar offense. Just prior to his arrest, he threatened to kill petitioner and her unborn baby. Upon his subsequent release, and knowing that he was court-ordered not to have contact with her, petitioner allowed father to have contact with her and the children. By her actions, petitioner demonstrated she still had either little concern or little appreciation for the harmful effects of domestic violence on her children and had little regard for the court's orders. Under the circumstances, the court had no choice but to protect petitioner's children by maintaining them in the department's custody. Consequently, we find no error in the juvenile court's finding of detriment and affirm its order setting the section 366.26 hearing.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.